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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/617,311

07/10/2003

Don Tabor

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25189

7590

01/30/2004

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EXAMINER

SWIATEK, ROBERT P

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 01/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/617,311

Applicant(s)

TABOR, DON

Examiner

Robert P. Swiatek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7-10-03.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6, 8-17, 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Elson (US 4,911,383: Ref. cited on Information Disclosure Citation). The kite to Elson includes a hull 14, airfoils 10, 12, and a ballast 26. A pocket or cage 24, which is part of the kite, contains the ballast prior to its being dropped at altitude. Ejection of the ballast from the kite is considered to constitute movement of the ballast with respect to the kite; moreover, as to claims 10, 17, although the ballast 26 is securely retained within the pocket 24 of Elson, element 26 nonetheless would move or vibrate periodically—even if only minimally—within its pocket due to the sudden, erratic swoops and darts of the kite while in flight. With respect to claim 8, column 3, lines 30-33, of Elson notes that the ballast 26 can be inserted to different extents within the pocket, thus affecting the orientation and resultant flight characteristics of the kite. When the ballast was released, the kite's aerodynamics performance would be altered. With regard to claims 11-16, the ballast 26 of Elson is in the form of a human—considered an animal capable of whimsical appearance—having a flexible parachute attached to it. The parachute's canopy is inflated when released from the kite.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-5, 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee (US 5,893,537) in view of Renger et al. (US 4,655,720: Ref. cited on Information Disclosure Citation). The patent to Lee discloses a kite in the form of a sailing vessel. No ballast *per se* is disclosed. It would have been obvious to one skilled in the art to employ a movable toy figure with the Lee kite, in view of the patent to Renger et al. that inclusion of such a figure allows the flight characteristics of the kite to be adjusted (see elements 12, 13, 20 and column 5, lines 2-6, of Renger et al.).

Claims 16, 18, 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Socha et al. (US 5,755,405). The Socha et al. parachute includes a flexible housing composed of an airfoil portion 12 joined to a mesh portion 14 through which air can freely pass. A filler material 22 for coupling a payload article to the parachute is located within the flexible housing. With respect to claim 18, the statement of intended use has not been given weight inasmuch as the Socha et al. parachute *could* be used with a flying toy. Column 3, lines 37-40, of Socha et al. notes that the parachute can be released from, *inter alia*, helicopters, airships, and balloons.

Claims 21, 23, 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Beaulieu (US 4,799,634). The Beaulieu patent discloses a kite 10 having a parachute 18 attached thereto by a hook and ring arrangement 16', 20. When attached to the kite, the parachute is considered

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to be pivotally suspended from the kite, moving back and forth continually as the kite ascends to an altitude from which the balloon can be released. The parachute's canopy is inflated as it descends (see Figure 1 of Socha et al.).

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Beaulieu. Attaching the parachute 18 of Beaulieu to a point atop the kite 10, while not shown, nonetheless would have been obvious to one skilled in the art in order to minimize oscillation of the kite-parachute combination.

Claims 25, 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Chapman (US 4,133,500: Ref. cited on Information Disclosure Statement). The figure 20A of Chapman is considered to constitute ballast removably and selectively positioned with respect to the kite along a serrated support 17. The support "permits some fore-and-aft swinging of the . . . figure in flight" (see column 2, lines 38-40, of Chapman).

Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In line 2, "said hull" lacks a prior antecedent basis.

The drawings are objected to because they should not include borders. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The abstract of the disclosure is objected to because in line 1, "Provided is a" should be changed to -A-. Correction is required. See MPEP § 608.01(b).

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The reference to Koch has been cited to provide an additional example of a kite with an attached figure.

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27 January 2004

Robert P. Swiatek

ROBERT P. SWIATEK
PRIMARY EXAMINER
ART UNIT 333 3643